

**REMARKS**

Reconsideration of this application is respectfully requested in view of the foregoing amendment and the following remarks. Claims 9-16, 21-23, 25-42, 44-53, and 55 are currently pending. Claims 9-16, 21-23, 25-42, 44-53, and 55 are rejected. Claims 9 and 21 are amended to provide further clarity by adding commas in the generating step. No new matter has been added.

**Double Patenting Rejection**

Claims 22, 23, 26-42, 44-53, and 55 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 3 and 6 of U.S. Patent No. 6,675,151. Specifically, the Examiner asserts that:

Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 22, 23, 26-28, 32, and 36 each contain obvious modifications to claims 3 or 6 of U.S. Patent No. 6,675,151.

As per claims 22, 23, 26-28, 32 and 36 of the instant application, the claims do not recite first receiving absentee information representing absent workers as recited in claims 3 and 6 of U.S. Patent No. 6,675,151, thus making claims 22, 23, 26-28, 32 and 36 broader. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to omit the step of receiving absentee information if the step was not desired or required as part of the overall invention. See MPEP 2144.04, II, A.

Additionally, as per claim 23 of the instant application, the claim replaces the word, Internet, in claim 3 of U.S. Patent No. 6,675,151 for the phrase, instant messaging. It is old and well known in the art that instant messaging is a type of communication able to be performed over a network such as the Internet. Thus, at the time of the invention, it would have been obvious to a person of ordinary skill in the art to replace Internet for instant messaging as doing so covers a particular type of communication that uses Internet technology, thus expanding the application of the instant invention.

Additionally, as per claim 27 of the instant application, the claim recites a computer readable medium that essentially performs the steps recited, in claim 3 of U.S. Patent No. 6,675,151. At the time of the invention, it would have been obvious to recite a computer readable medium that performs the steps of a claimed method since doing so simply covers another statutory class.

As per claims 37, 44, 45, 46, 50 and 55 of the instant application, the claims recite similar language as recited in claims 3 and 6 of U.S. Patent No. 6,675,151. However, in claims 37, 44, 45, 46, 50 and 55 of the instant application, the use of the phrases “first worker” and “second worker” are used in place of the phrases “absent worker” and “substitute worker” as recited in claims 3 and 6 of U.S. Patent No. 6,675,151. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to replace the phrases “absent

worker" and "substitute worker" with "first worker" and "second worker," respectively, as doing so broadens the scope of the type of worker.

Additionally, as per claims 44, 45, 46, 50 and 55 of the instant application, the claims do not recite first receiving absentee information representing absent/first workers as recited in claims 3 and 6 of U.S. Patent No. 6,675,151, thus making claims 44, 45, 46, 50 and 55 broader. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to omit the step of receiving absentee information if the step was not desired or required as part of the overall invention. See MPEP 2144.04, II, A.

Additionally, as per claims 44, 45, 50 and 55 of the instant application, the claims recite a computer readable medium that essentially performs the steps recited in claim 3 of U.S. Patent No. 6,675,151 (minus the differences as noted above). At the time of the invention, it would have been obvious to recite a computer readable medium that performs the steps of a claimed method since doing so simply covers another statutory class.

The undersigned representative acknowledges this rejection and will submit a terminal disclaimer when the present claims are in condition for allowance, if deemed necessary at that time.

**Rejection of claims 9-16, 21, 25, 43, and 55 under 35 USC § 102(a)**

Claims 9-16, 21, 25, 43, and 55 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the Subfinder™ System ("Subfinder"). Specifically, the Examiner asserts that:

As per claim 9, Subfinder discloses a substitute fulfillment system that identifies and secures substitute workers for a plurality of different organizations comprising:

a database comprising worker records, said worker records having information associated with workers for each of the organizations, and substitute records, said substitute records having information associated with at least one substitute worker (reference A, paragraphs 2 and 5; reference D, paragraph 8; Subfinder utilizes a database that contains worker records where the workers are teachers and the worker records include teacher availability, teacher skills and teacher preferences. The teachers are associated with various schools within school districts.);

a server coupled to the database, the server is configured for:

receiving an absentee list of one or more absent workers from an organization via at least one communication link coupled to the server (reference A, paragraph 2; reference B, paragraph 1; Teachers call into the system and record their absences.);

generating in response to receiving the absentee list one or more lists of one or more potential substitute workers who can fill in for each absent worker on

the absentee list using the worker records associated with the absent worker and the substitute records (reference A, paragraph 2; reference B, paragraph 1; For each absent teacher, a list of qualified substitute teachers is generated and each substitute teacher is contacted to fill in for the absent teacher.); and

contacting potential substitute workers listed on each of the generated lists until one of the substitute workers in each of the generated lists agrees to fill in for the absent worker or until all of the generated lists are exhausted (reference A, paragraph 2; reference B, paragraphs 1 and 3; The system automatically contacts substitute teachers on the lists until the absent teacher position is filled or until the system has contacted everyone on the lists.).

Subfinder does not expressly disclose receiving the absentee *list* from an *authorized individual associated with a first organization, wherein the authorized individual is a worker other than one of the absent workers*. Rather, Subfinder teaches automating the process of receiving absentee information by having the teachers (absent workers) call into the system directly to record their absence, where the system then generates absentee reports and automatically broadcasts the reports to the individual school sites (reference A, paragraph 9). Examiner takes Official Notice that it is well known to manually perform an automated process so as to ensure more control over the process such as in situations where something needs to be overridden or when a computer failure occurs and further, that an authorized individual is usually designated to control the manual process. Examiner further takes Official Notice that lists provide an organized and convenient means to manage information. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify Subfinder so that it receives an absentee *list* from an *authorized individual associated with a first organization, wherein the authorized individual is a worker other than one of the absent workers* because doing so provides the authorized individual with more control over the process of managing the absentee information, thereby ensuring that the proper and necessary absentee information is included in the list, which, in turn, ensures that the proper and necessary information is available for contacting potential substitute workers to fill in for the absent workers indicated in the absentee list.

As per claim 10, Subfinder discloses the substitute fulfillment system of claim 9 wherein each of the least one communication link is a link selected from the group consisting of a telephone communication link or an Internet communication link (reference A, paragraph 2; reference C, paragraph 6; Subfinder uses a telephone communication link to receive absentee information and to contact and secure substitute teachers for the absent positions.).

As per claim 11, Subfinder discloses the substitute fulfillment system of claim 9 wherein the server generates the list of one or more substitute workers using a preferred list of substitute workers associated with the worker record for the absent worker (reference A, paragraph 2; reference B, paragraphs 1 and 3; reference D, paragraph 8; Subfinder generates preferred lists of substitute teachers based on criteria such as substitute teachers the absent teacher has designated and skills/specialties/qualifications of substitute teachers.).

As per claim 12, Subfinder discloses the substitute fulfillment system of claim 9 wherein the server is further configured to generate a list of substitute workers and names of the absent workers who the substitute workers will be filling in for a given organization and to transmit the generated list of substitute workers and names of the absent workers who the substitute workers will be filling in for to the given organization via the at least one communication link (reference A, paragraphs 4 and 9; Principles and other administrators have the ability to call into the system to receive reports on absentee information as well as substitute teacher information. Reports can also be faxed.).

As per claim 13, Subfinder discloses the substitute fulfillment system of claim 9 further comprising an interactive voice response system controlled by the server for interacting with a potential substitute worker from the generated list of potential substitute workers via at least one telephone communication link whereby the potential substitute worker is secured for filling in for the absent worker (reference B, paragraphs 4-8; Absent and substitute teachers use a combination of voice and telephone number prompts to interact with Subfinder. Absent teachers indicate their absence and any other special messages for the substitute. Substitute teachers indicate a desire to accept or decline a job.).

As per claim 14, Subfinder discloses the substitute fulfillment system of claim 9 wherein the server is further configured to receive a message via the at least one communication link and to forward the received message to the substitute worker who agrees to fill in for the absent worker via the at least one communication link (reference B, paragraphs 4 and 5; Absent teachers may leave messages for substitute teachers via a telephone link.).

As per claim 15, Subfinder discloses the substitute fulfillment system of claim 9 wherein the organizations are unaffiliated (reference B, paragraph 10; Subfinder may be used across multiple school districts, which are not affiliated with each other.).

As per claim 16, Subfinder discloses the substitute fulfillment system of claim 9 wherein the workers are teachers and the substitute workers are substitute teachers (reference B, paragraph 1 ).

Claims 21 and 25 recite substantially similar subject matter to claim 9 above. Therefore claims 21 and 25 are rejected on the same basis as claim 9 above.

Regarding claim 9 of the present application, the undersigned representative traverses the rejection. As admitted by the Examiner, “Subfinder does not expressly disclose receiving the absentee *list* from an *authorized individual associated with a first organization, wherein the authorized individual is a worker other than one of the absent workers.*” In Subfinder, “teachers call into the system and record their absences.” Office Action, p. 7. In contrast, in claim 9 of the present application, an authorized individual provides the absentee information to the server. Thus, a difference between claim 9 of the present application and Subfinder is the person

providing the absentee information. For example, if a plurality of teachers will require substitute teachers for a specific day due to training, an authorized individual can provide the absentee information to the server rather than having each of the teachers providing the absentee information. In such a scenario, the authorized individual may not be receiving the information from the individual teachers since the authorized individual is determining who will be attending the training.

Rather than citing a reference for teaching or disclosing this step, the Examiner inappropriately takes Official Notice. Specifically, the Examiner recites that “it is well known to manually perform an automated process so as to ensure more control over the process so as to ensure more control over the process such as in situations where something needs to be overridden or when a computer failure occurs and further, that an authorized individual is usually designated to control the manual process.” Office Action, pp. 7-8.

Claim 9 recites a “server configured for: receiving, from an authorized individual associated with a first organization, an absentee list of one or more absent workers from the first organization via at least one communication link coupled to the server, wherein the authorized individual is a worker other than one of the absent workers.” The server is receiving a list of absent worker(s). The server is the element receiving the information. The authorized individual may not be replacing the server, but rather providing information to the server. In other words, a human may not be replacing an automated process. Hence, the Examiner’s taking of Official Notice is inappropriate because claim 9 does not require manually performing an automated process.

Moreover, the Examiner has not judiciously taken Official Notice. “In limited circumstances, it is appropriate for an examiner to take official notice of facts not in the record or to rely on ‘common knowledge’ in making a rejection, however such rejections should be judiciously applied.” MPEP 2144.03 It is never appropriate to rely solely on “common knowledge” in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. *Zurko*, 258 F.3d at 1385, 59 USPQ2d at 1697 (“[T]he Board cannot simply reach conclusions based on its own understanding or experience-or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings.”); MPEP 2144.03 (emphasis added).

The Office Action does not provide the proper motivation to modify Subfinder. Significantly, it has been judicially held that generalizations do not establish the requisite motivation to modify a specific reference in a specific manner to arrive at a specifically claimed invention. *See In re Deuel*, 51 F.3d 1552, 34 USPQ2d 1410 (Fed. Cir. 1995). In discussing the steps that the Examiner takes Official Notice for, the Examiner asserts that “At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify Subfinder so that it receives an absentee *list* from an *authorized individual associated with a first organization, wherein the authorized individual is a worker other than one of the absent workers* because doing so provides the authorized individual with more control over the process of managing the absentee information, thereby ensuring that the proper and necessary absentee information is included in the list, which, in turn, ensures that the proper and necessary information is available for contacting potential substitute workers to fill in for the absent workers indicated in the absentee list.” Such conclusory statements are inappropriate without the Examiner providing specific factual findings predicated on sound technical and scientific reasoning to support the Examiner’s conclusory statements. The Examiner is relying on conclusory statements and has not provided proper motivation to modify Subfinder, thus the Examiner has not met his burden of establishing a *prima facie* case of obviousness.

Lastly, the Examiner has inappropriately taken Official Notice regarding lists. Specifically, the Examiner asserts “Examiner further takes Official Notice that lists provide an organized and convenient means to manage information. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify Subfinder so that it receives an absentee *list* from an *authorized individual associated with a first organization, wherein the authorized individual is a worker other than one of the absent workers* because doing so provides the authorized individual with more control over the process of managing the absentee information, thereby ensuring that the proper and necessary absentee information is included in the list, which, in turn, ensures that the proper and necessary information is available for contacting potential substitute workers to fill in for the absent workers indicated in the absentee list.” An authorized individual providing a list of absentee workers may not provide the “control over the process” that the Examiner is relying on for taking official notice. For example, if a teacher reports an absence, the teacher may provide additional information such as a preferred

substitute and/or notes to the substitute worker. In such a scenario, if the authorized individual provides the absentee information, the preferred substitute and/or notes may not be provided. Thus, the Examiner's motivation to modify Subfinder, as stated above, is improper and the Examiner has not judiciously taken Official Notice.

For at least these reasons, independent claim 9, as well as dependent claims 10-16, are patentable over the cited art. Therefore, the undersigned representative will not address the arguments with respect to claims 10-16 and reserves the right to address these arguments at a later time. Regarding independent claims 21, 25, 43, and 55, since these claims contain similar limitations as argued above with respect to independent claim 9, the same arguments apply to independent claims 21, 25, 43, and 55. Accordingly, it is respectfully requested that the rejection of claims 9-16, 21, 25, 43, and 55 under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

**Allowable Subject Matter**

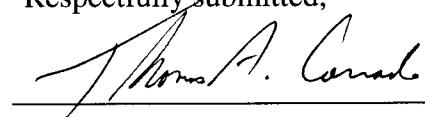
The undersigned representative thanks the Examiner for the allowance of claims 22, 23, 26-42, 44-53, and 55 upon the filing and acceptance of a Terminal Disclaimer to overcome the current Double Patenting rejection.

**CONCLUSION**

The foregoing is submitted as a full and complete Response to the non-final Office Action mailed March 16, 2007, and early and favorable consideration of the claims is requested. If the Examiner believes any informalities remain in the application which may be corrected by Examiner's Amendment, or if there are any other issues which may be resolved by telephone interview, a telephone call to the undersigned attorney at (703)714-7448 is respectfully solicited.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 50-0206, and please credit any excess fees to such deposit account.

Respectfully submitted,



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